

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY****REGION IX****75 Hawthorne Street
San Francisco, CA 94105-3901**

December 17, 2004

John D. Webb, Chief
North Region Office of Environmental Services
Caltrans District 3
2389 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Subject: Concurrence on the Conceptual Mitigation Plan and Implementation Schedule for
State Route (SR) 65 Lincoln Bypass Project in Placer County, California

Dear Mr. Webb:

We are writing in response to your request for EPA's concurrence on the Conceptual Mitigation Plan for the above-referenced project. This request is pursuant to Appendix A of the National Environmental Policy Act/Clean Water Act Section (CWA) 404 Integration Process for Surface Transportation Projects in Region 9 Memorandum of Understanding (NEPA/404 MOU).

Based on our expedited review of the draft Mitigation and Monitoring Proposal (MMP) that we received on December 1, 2004, EPA concurs on the conceptual mitigation plan and implementation schedule for this project. Although the draft MMP includes the Mariner Ranch as a site for vernal pool prevention, we are aware that Caltrans has not yet gained site access to this property. As a result, Caltrans has not been able to determine the number of acres of vernal pools that are on-site and available for preservation. As details become available regarding the status of mitigation sites and/or acreage of aquatic resources, it will be necessary for Caltrans to consult with federal resource and regulatory agencies in order to avoid future delays in the federal permitting process. We suggest that Caltrans establish a procedure to provide regular project updates to EPA, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service, including the status of site availability, site access, and vernal pool mapping.

While we agree in concept with the overall mitigation approach, sites and ratios in the draft MMP, we have identified three major concerns that we recommend Caltrans address in future documents, including the final MMP: 1) the distinction made between mitigation required under CWA and Endangered Species Act (ESA) for vernal pool impacts, 2) the proposal to mitigate in a distant watershed, and 3) the protocol for vernal pool creation.

The purpose of distinguishing CWA mitigation from ESA mitigation for vernal pools in the draft MMP is unclear. Compensatory mitigation for impacts that cannot practicably be avoided, including impacts to endangered species, is required as part of the CWA Section 404. Table N: "Summary of Proposed Compensatory Mitigation Elements" of the draft MMP (p. 60-61) implies that vernal pool preservation done under the ESA is not required under the CWA. We recommend consolidating the entire vernal pool mitigation proposal in the final MMP and other CWA permitting documents to avoid confusion regarding CWA permitting procedures.

The final MMP and other CWA permitting documents should include an explanation of proposed vernal pool preservation in a distant watershed at Bryte Ranch. The "Mitigation Action Plan, 1990 Memorandum of Agreement concerning the Determination of Mitigation under Clean Water Act Section 404(b)(1) Guidelines between the EPA and the Department of the Army (1990 Mitigation MOA)," and the "Army Corps of Engineers Regulatory Guidance Letter Regarding Mitigation (RGL 02-2)" underscore the importance of, and preference for, placing compensatory mitigation in close proximity, preferably the same watershed, to project impacts. The final MMP for this project should clearly document the reasons that vernal pool mitigation cannot occur within the same watershed as the project impacts.

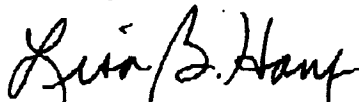
The final MMP and other CWA permitting documents should describe how the created vernal pools at Aitken Ranch will replace lost vernal pool functions and values at the project site. The plan for creation of pools should be based on the functions and values of the pools that are expected to be filled on the project site. It is important to locate, describe, and map the reference pools (at the project site) that will be used for species lists and size measurements. The final MMP and other CWA permitting documents should provide a complete description of this process.

Finally, we recommend that the final MMP reflect the *Operational Guidelines for Creating and Restoring Self-Sustaining Wetlands*¹ developed by the National Research Council and national guidance developed by the multi-agency National Mitigation Action Plan task force².

The next step in the NEPA process is the preparation of the Final Environmental Impact Statement (EIS). Please let me know if we can be of assistance in addressing our Draft EIS comments as you prepare the Final EIS.

We appreciate the opportunity to participate in the NEPA/404 MOU process. Please feel free to share this concurrence letter with the participants at the November 5 interagency meeting. If you have any questions, please contact Erin Foresman of EPA's Wetlands Regulatory Office at 415-972-3396 or foresman.erin@epa.gov, or Nancy Levin of my staff at 415-972-3848 or levin.nancy@epa.gov.

Sincerely,



Lisa B. Hanf, Manager
Federal Activities Office

cc: Maiser Khaled, Federal Highway Administration
Tom Cavanaugh, U.S. Army Corps of Engineers
Ken Sanchez, U.S. Fish and Wildlife Service
Celia McAdam, Placer County Transportation Planning Agency

¹National Research Council (2001) *Compensating for Wetland Losses Under the Clean Water Act. Operational Guidelines for Creating and Restoring Self-Sustaining Wetlands*, Chapter 7 pp. 123 – 128.

²<http://www.mitigationactionplan.gov/>

cc: **Maiser Khaled, Federal Highway Administration**
Tom Cavanaugh, U.S. Army Corps of Engineers
Ken Sanchez, U.S. Fish and Wildlife Service
Celia McAdam, Placer County Transportation Planning Agency